



**PUBLIC PERCEPTION AND EFFECTIVENESS OF PUNISHMENT  
FOR *KHALWAT* PERPETRATORS IN ACEH**

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DOI: 10.21154/justicia.v19i1.3304

*Received: Sept 17, 2021*

*Revised: May 2022*

*Approved: June 23, 2022*

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**Abstract:** This study examines the public's perception of *khalwat* and the effectiveness of punishment against perpetrators' violation of *khalwat* in Aceh. This study is a normative-empirical study with qualitative data. Data sources are the Constitution of 1945, Law No. 1 of 1946 concerning the Criminal Code, Law No. 8 of 1981 concerning the Criminal Procedure Code, and Qanun Aceh No. 6 of 2014 concerning the *Jinayat* Law. Field data are sourced from the community, leaders, religious leaders, academics, the *Syar'iyah* Court, and *khalwat* perpetrators. The results showed that generally, the community supports the establishment of the rule of *jinayat khalwat* for the sake of benefit. The establishment of *Qanun Jinayat* reflects the Islamic life of the Acehnese people so that the protection of self-respect and their families is inseparable. The application of penalties for *khalwat* violations has not been effective in all regions of Aceh province. However, some areas implement the punishment effectively, proven by the decrease in cases of *khalwat* violations. However, the application of punishment to *khalwat* perpetrators did not positively affect other parts of the region—the number of *jinayat khalwat* that occurred increased. Therefore, punishment for *khalwat* perpetrators must be able to change the perpetrator's behavior and become a lesson for the general public. Moreover, the government is advised to be more aggressive in socializing this *Qanun*. This research provides information and input for the government, law enforcement, and the community in Aceh.

Penelitian ini mengkaji persepsi masyarakat tentang *khalwat* dan efektivitas hukuman terhadap pelaku pelanggaran *khalwat* di Aceh. Kajian ini adalah kajian normatif-empiris dengan jenis data kualitatif. Data dokumen berupa peraturan perundang-undangan,

Sementara data lapangan bersumber dari masyarakat, tokoh, agama, akademisi, Mahkamah Syar'iyah dan pelaku khalwat. Hasil penelitian menunjukkan; umumnya masyarakat mendukung pembentukan aturan jinayat khalwat demi kemaslahatan. Pembentukan Qanun Jinayat merupakan refleksi kehidupan masyarakat Aceh yang Islami sehingga perlindungan terhadap kehormatan diri dan keluarganya tidak dapat dipisahkan. Umumnya masyarakat mendukung pembentukan aturan jinayat khalwat demi kemaslahatan. Pembentukan Qanun Jinayat merupakan refleksi kehidupan masyarakat Aceh yang Islami sehingga perlindungan terhadap kehormatan diri dan keluarganya tidak dapat dipisahkan. Penerapan hukuman terhadap pelanggaran Khalwat belum efektif di semua daerah di provinsi Aceh, meski demikian ada sebagian wilayah yang efektif jika dilihat dari penurunan kasus. Namun, penerapan hukuman terhadap pelaku khalwat tidak memberikan efek positif di sebagian wilayah yang lain. Jumlah jinayat khalwat yang terjadi justru meningkat. Karenanya, hukuman bagi pelaku khalwat harus mampu merubah perilaku pelaku, menjadi pelajaran bagi masyarakat umum, dan pemerintah disarankan lebih gencar mensosialisasikan Qanun ini, khususnya sosialisasi terhadap pengaturan, hikmah pelarangan khalwat dan dampak buruk khalwat. Penelitian ini menjadi informasi dan masukan bagi pemerintah, penegak hukum dan masyarakat di Aceh.

**Keywords:** Public perception; Effectiveness of punishment; *Khalwat*; *Qanun*.

## INTRODUCTION

In the context of the implementation of Islamic sharia in Aceh, Qanun<sup>1</sup> is an instrument or Regional Regulation (*Peraturan Daerah/Perda*) ruling the administration and life of the people of Aceh at the provincial or regency/city level. The establishment of *Qanun* becomes a juridical instrument for implementing the formation, binding methods, and standards for all institutions with authority to form *Qanun*. *Qanun* is an instrument or regulation that served as the basis for the application of law in Aceh. One of the violations of the law in Aceh is *khalwat* with its various modes. Referring to data in 2018, *Wilayatul Hisbah (WH)* Banda Aceh handled 77 cases of *khalwat*.<sup>2</sup> The Langsa City Islamic Sharia Service stated that in 2018, the number of *jinayat khalwat* reached 20 cases. Meanwhile, in Lhokseumawe City, there were 25 cases at the end of 2018.<sup>3</sup> The prohibition of *khalwat*, as referred to in the third part of Article 23 and Article 24 of *Qanun* Aceh No. 6 of 2014 on *Jinayat Law*, specifies that *khalwat* is an activity, act, and condition leading to adultery or prostitution.

<sup>1</sup> Qanun is a regional regulation (*Peraturan Daerah/Perda*) ruling the implementation of laws in Aceh Province in the context of implementing special autonomy in the jurisdiction of the government. See article 1 point 8 of Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam. Sirajuddin, "The Enactment of Islamic Sharia....", (Aceh, 2001), 74.

<sup>2</sup> Khalwat is an act in a closed or hidden place between 2 (two) people of different sexes who are not *mahram* and without marital ties with the willingness of both parties leading to adultery.

<sup>3</sup> Diskominfortik Kota Banda Aceh, "Satpol PP Dan WH Banda Aceh Tangani 230 Kasus Pelanggaran Perda Syariat," 2018, <https://diskominfo.bandaacehkota.go.id/2018/12/17/2018-satpol-pp-dan-wh-banda-aceh-tangani-230-kasus-pelanggaran-perda-syariat/>. accessed June 2021.

There are various polemics and public perceptions in law enforcement against *jinayat khalwat*, where the government has issued *Qanun* No. 6 of 2014 on *jinayat* law as a basis. However, the formulation of *khalwat* in *Qanun* is considered very narrow since it limits *jinayat khalwat* only to conditions of “solitude, seclusion, closed or hidden.” Meanwhile, the current mode of *khalwat* violation has wide varieties and patterns. *Khalwat* is performed in cars, concerts, and other outdoor venues.

The *khalwat* case once happened against a “kiss” case between a girl named Yn and a *TNI* (Indonesian National Soldier) member named Pratu Wd in 2005. The incident occurred at Krueng Geukueh Port Pier, Lhokseumawe, during the release ceremony of *TNI*, who was then serving in Aceh. The perverted incident was covered by the media and became an interesting issue because Aceh is a unique region applying Islamic law.<sup>4</sup> According to the head of the NAD Islamic Sharia Service, Alyasa Abubakar, the *TNI* in Aceh will be free from the law of flogging. If they violate Islamic law, they will be tried in a Military Court, not a Shari’a Court. If the *Syar’iyah* Court tries the *jinayat khalwat* case committed by *TNI* members, the Aceh Parliament must change its *Qanun*.<sup>5</sup> Many views state that the incident cannot be ensnared with *Qanun Khalwat*, which at the time was regulated in *Qanun* No. 14 of 2013. There was no *khalwat* element limiting it to the “secluded or hidden” condition in this event.

Although Aceh Province has the specificity to implement Islamic law both in the royal and current era of government, there are allegations that the punishment contained in Islamic law is too cruel, inhumane, and violates the principles of human rights. These charges are also aimed at the criminal offense of *khalwat*, where the penalty is in the form of public caning and/or payment of fines and imprisonment for a specific time. Although the death penalty nomenclature in *Qanun Jinayat* is the main punishment, it is quite possible to apply other punishments, and even caning can be used as an alternative punishment.

The study of caning about *jinayat khalwat*<sup>6</sup> and human rights, conducted by Kemala Fakhira Shansi et al., found that implementing *jinayat* law raises pros and cons regionally, nationally, and internationally. They also viewed *ITB* students’ perspective on implementing *jinayat* law in Aceh.<sup>7</sup> Makbull Rizki and Haiyun Nisa

<sup>4</sup> Heddy Lugito dan Ibrahim Passe, “Tentara, Asmara, Dan Air Mata,” <http://arsip.gatra.com/2005-10-02/artikel.php?id=88737>, Accessed 23 October 2019.

<sup>5</sup> Adi Warsidi, “TNI Di Aceh Tak Tersentuh Hukum Cambuk-Tempo.Co Nasional”, Accessed On 22 Desember 2021, <https://nasional.tempo.co/read/63095/tni-di-aceh-tak-tersentuh-hukum-cambuk>.

<sup>6</sup> *Jinayat khalwat* is any act that is prohibited by *syara’* against actions in a closed or hidden place between 2 (two) people of the opposite sex who are not mahram and without marital ties with the willingness of both parties which leads to adultery.

<sup>7</sup> Kemala Fakhira Shandi et al., “Pandangan Mahasiswa Tentang Hak Asasi Manusia Dalam Penerapan Hukum Qanun Jinayah Di Aceh,” *De Cive: Jurnal Penelitian Pendidikan Pancasila dan Kewarganegaraan* 1, no. 3 (2021): 8-15.

examined people's attitudes toward caning and found that people have minimal knowledge regarding caning due to a lack of socialization.<sup>8</sup>Rahmiati reviewed the Legal Politics of *Qanun* No. 6 of 2014 on the Jinayat Law and found a local government policy in applying criminal sanctions for caning the violations of *khalwat* crimes.<sup>9</sup>

Erfin Dermawan Surbakti and Endang Agoestian revealed that the existence of *qanun jinayat* is recognized as a national parent, and there is no contradiction between the content of *Qanun Jinayat* and the National Criminal Law.<sup>10</sup> Ananda A. Tumbol et al. asserted that caning in Aceh in no way violates human rights.<sup>11</sup> Simon Purba et al. reviewed law enforcement against adultery perpetrators from the Criminal Code perspective and *Qanun* in Lhoksukon North Aceh.<sup>12</sup>Darul Faizin reviewed the Views of Acehese Clerics on the Implementation of Caning in Prisons and found that Acehese clerics do not all agree with canings carried out in prisons.<sup>13</sup>

There are pros and cons to caning, and punishment against Jinayat Khalwat is counter-productive amid the application of Islamic law in Aceh. In principle, flogging is one type of criminal sanction that exists in the criminal system in the Aceh region.<sup>14</sup>This study examines the public's perception of the criminal act of khalwat in Aceh and the effectiveness of punishment for perpetrators of khalwat crimes in Aceh based on Qanun No. 6 of 2014 on Jinayat. This study uses normative-empirical methods with quality data, studied through the 1945 Constitution; Law No. 1 of 1946 on the Criminal Code; Law No. 8 of 1981 on the Criminal Procedure Code; Qanun Aceh No. 6 of 2014 on Jinayat Law; Qanun Aceh No. 7 of 2013 on Jinayat Procedural Law, field data in the form of public views related to khalwat crimes and also examine cases of jinayah khalwat violations in the Syar'iyah Court.

<sup>8</sup> Makbull Rizki and Haiyun Nisa, "Sikap Masyarakat Terhadap Hukuman Cambuk Sebagai Salah Satu Bentuk Hukuman Pelanggaran Qanun Jinayat," *Indonesian Journal of Islamic Psychology* 3, no. 1 (2021): 1-20, <https://e-journal.iainsalatiga.ac.id/index.php/ijip/article/view/5924/1905>.

<sup>9</sup> Rahmiati, "Politik Hukum Terhadap Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayah," *Jurnal SASI* 26, no. 1 (2020): 29-38, <https://doi.org/https://doi.org/10.47268/sasi.v26i1.209>.

<sup>10</sup> Erfin Dermawan Surbakti and Endang Agoestian, "Analisis Yuridis Qanun Jinayat Dalam Strukturisasi Hukum Pidana Nasional," *Rechtenstudent Journal Fakultas Syariah IAIN Jember* 1, no. 2 (2020): 110-20, <https://doi.org/https://doi.org/10.35719/rch.v1i2.25>.

<sup>11</sup> Ananda A. Tumbol, Selviani Sambali, and Bobby Pinasang, "Kajian Yuridis Terhadap Pidana Cambuk Di Provinsi Nanggroe Aceh Darussalam Dalam Perspektif Hak Asasi Manusia," *Lex Crimen* 10, no. 9 (2021): 127-36, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/36559/33999>.

<sup>12</sup> Simon Purba, Mustamam, and Adil Akhyar, "Penegakan Hukum Terhadap Pelaku Perzinahan Dalam Perspektif KUHP Dan Qanun Di Lhoksukon Aceh Utara," *Jurnal Ilmiah Metadata* 3, no. 2 (2021): 651-68, <http://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/82/96>.

<sup>13</sup> Darul Faizin, "Pandangan Ulama Aceh Terhadap Pelaksanaan Hukuman Cambuk Di Penjara," *Jurnal Syarah* 10, no. 1 (2021): 21-35, <https://ejournal.iainlhokseumawe.ac.id/index.php/syarah/article/view/1144/873>.

<sup>14</sup> Al Yasa' Abubakar, "Syariat Islam Di Propinsi Nanggroe Aceh Darussalam" (Dinas Syariat Islam, Provinsi Nanggroe Aceh Darussalam, 2005).

### **PEOPLE'S PERCEPTION OF JARIMAH KHALWAT**

The people of Aceh consider that to maintain stability, legal certainty, and justice, it is necessary to establish laws and regulations in the form of Qanun to regulate and ensnare perpetrators of khalwat crimes to create order or peace and the benefit the community as a whole. In other words, the determination of deeds according to the type of offense and its sanctions is intended to maintain and maintain the existence and survival of society because if a person commits an evil (forbidden) deed, then he will return to life a second time until he gets a proper recompense for what has been done, therefore, ensuring the security of the necessities of life is the primary goal of sharia.<sup>15</sup>

According to Aklima Juned, regulation of khalwat deeds is needed to bring order to the behavior of teenagers who have exceeded the limits. Many teenagers in the village and the city from all walks of age met and chatted, which was not his mahram. Many young people, both students, sit in quiet places such as parks, parking lots, and cars, so it is feared that they are committing acts prohibited by Islam.<sup>16</sup>

In general, the community fully supports the formation of a rule aimed at the good and benefit of the ummah. In the historical aspect, the people of Aceh have known and practiced Islamic law from a long time ago until now as a guide to life both in the aspect of muamalah, jinayat, and siyasah. The formation of Qanun Jinayat is, particularly the arrangement of the jinayat khalwat, is a reflection of the life of the Acehnese people, who are very Islamic so that the protection of the honor of themselves and their families is part of the practice that cannot be separated from the life of the Acehnese people.

According to Hasnadi, jinayat khalwat can damage a person's honor and cause slander for both partners who are not mahram. The criminal act of khalwat harms the perpetrators and damages the good name of the family concerned. Although the act of khalwat is considered to have not occurred as the act of adultery, a person who was arrested performing khalwat with a person who is not his mahram will then give rise to allegations, accusations, or suspicions that both spouses have committed acts prohibited by religion and even the possibility of committing adultery.<sup>17</sup>

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<sup>15</sup> Nawir Yuslem and Zakirun Hafsah, "Efektivitas Sanksi Qanun Nomor 6 Tahun 2014 Tentang Tindak Pidana Khamar, Maisir Khalwat, Zina, Dan Dampaknya Terhadap Perilaku Masyarakat Kota Subulussalam," *AT-TAFAHUM: Journal of Islamic Law* 3, no. 1 (2019): 147-64, <http://jurnal.uinsu.ac.id/index.php/attafahum/article/view/6770/3002>.

<sup>16</sup> Aklima Juned, NGO Activist, *interview*, "Public Perception of The Arrangement of Jinayat Khalwat," October 29, 2019.

<sup>17</sup> Hasnadi, Observer of Islamic Sharia, *interview*, "Negative Impact of Jinayat Khalwat," (Lhokseumawe), August 30, 2020.

Informants interviewed generally realized that khalwat's actions negatively impacted personal, family, and social life. The prohibition or regulation of the offense *khalwat* is expected to prevent the acts of a heavier jinayat such as adultery *jinayat* so that greater mundaneness can be avoided for both the perpetrator and the family and the community. Therefore, the regulation of jinayat khalwat in Qanun No. 6 of 2014 concerning the Jinayat Law is urgently needed to create order and benefit the ummah.

However, the Society has a mixed view of the types of punishments and the process of implementing punishments khalwat, in particular against caning. These varied views will affect the dynamics of people's behavior toward the convicted, towards the caning process, and the application of Qanun Jinayat in general. According to Anwar, the perception of a diverse society and responding that no one wants the implementation of Islamic Sharia as a whole that covers all dimensions of life becomes a challenge in the implementation of caning. Responses and diverse views are referred to as perceptions, in which the individual will respond to the stimulus he receives. Subsequently, the information will be interpreted based on the knowledge and experience he has.<sup>18</sup>

Various responses and reactions from the community, both pro and con are influenced by several things, such as many parties who have not correctly understood the nature of the jinayat law for punishment and order and shari'a which is realized by the enforcement of the applicable jinayat punishment. According to Sullati, The variety of people's views and perceptions of caning is influenced by several things, namely public knowledge and understanding of the implementation of Islamic shari'a, the application of Qanun Jinayat, and caning. The better one understands Islamic law, and the easier one is to accept the existence of the punishment.<sup>19</sup>

Another influence is how individuals obtain knowledge and cultivate and translate it based on the truth of the knowledge itself. Knowledge is a learning process that can affect individuals that can come from family, society, and mass media which is very effective as a model of constantly repetitive behavior and becomes a reinforcing factor. Therefore, the socialization process must continue to be carried out to help the community understand all the wisdom behind Islamic law that is codified in various favorable laws in Indonesia, especially in Aceh.

This is in line with the information obtained from research informants that socialization regarding implementing Islamic shari'a needs to be continuously

<sup>18</sup> Anwar, NGO Activist, *interview*, "Differences Perception of Caning Punishment," (Lhokseumawe), July 30, 2020.

<sup>19</sup> Sullati, Educational Leaders, *interview*, "Differences Perception of Caning Punishment," (Lhokseumawe), July 30, 2020.

carried out with various alternative media, directly and through other media. The family and the environment are essential in conveying information about implementing Islamic sharia, especially caning for Qanun jinayat violators. The government also has a responsibility to provide understanding to the people.

According to Fadlul Rahman, the caning has been effective. It will undoubtedly have a deterrent effect on the perpetrator and be a lesson for the people who witnessed the implementation of the caning. After the caning is carried out, the community, especially teenagers who witness the implementation of the caning, will not do the act of khalwat because he felt ashamed and was witnessed by many people so that everyone knew him as a perpetrator of violations of Islamic sharia.<sup>20</sup>

According to the Founder of the Cet Langet NGO (Edi Fadhil), the sanctions written in Qanun have indeed been reasonable and have a good impact on the community. However, if the sanctions are continuously implemented, and canings, for example, are constantly carried out, then this is what I do not think is good. In addition, it will also affect the budget. I think the more people serving sentences, the worse the image of an area. Because the media will load the sanctions carried out. In addition, the more people serving sentences, the more it proves that the government failed to do its job.<sup>21</sup>

Muhammad Faesal believes that Qanun and Qanun sanctions are reasonable in regulation. I see that there are generally no cons in society about the punishment. However, after sanctions are imposed, the government should provide a solution because most people do not have a regular jobs. That is why they do things prohibited in Qanun, such as providing or fitting places that can lead to acts of adultery, such as jinayat khalwat and ikhtilat.<sup>22</sup>

The general public does not understand the arrangements regarding jinayat khalwat implemented in Aceh. This can be seen in Sharifah's view that I do not understand what Qanun is and that Qanun's sanctions govern jinayat khalwat. If he said that Qanun's goal had the effect of reducing evil deeds in society, it seems that the incredible impact has not yet reached us. In our village, things are still what they used to be, and teenage children are still free to walk alone together, which is not the mahram. Even in tourist attractions, internet cafes, and other places, they are alone regardless of the rules or appeals. In fact, what is even worse is that some parents or adult couples do the same thing that leads to adultery.<sup>23</sup>

<sup>20</sup> Fadhlul Rahman, NGO Activist, *interview*, "The Implementation of Caning Punishment," (Lhokseumawe), July 4, 2019.

<sup>21</sup> Chairman of Cet Langet NGO, *interview*, "The Implementation of Jinayat Khalwat Punishment," (Banda Aceh), July 18, 2019.

<sup>22</sup> Muhammad Faesal, Religious Leaders *interview*, "Jinayat Khalwat And Implementation Punishment" (Lhokseumawe), August 14, 2019.

<sup>23</sup> Syarifah, Gender Figures, *interview*, "Public Awareness in Obeying Qanun Jinayat" (Lhokseumawe), June 15, 2019.

The informant of the perpetrator of the khalwat crime interviewed was Convict 1 with Verdict Number 9/JN/2018/MS. Bna mentioned that the execution of the caning against me was very hurtful and inflicted shame, not only against myself but also damaged the honor of my extended family. The caning in public was very effective because I felt ashamed and could not forget it until any time. I am very grateful to have served the caning sentence because the shame caused by the execution of the punishment can change my attitude and behavior not to commit such despicable acts.<sup>24</sup>

The perpetrator of the second jinayat khalwat, of the same view, that is, the punishment I received at the time became a momentum for me to do self-introspection about the behavior and deeds that I had done. At that time, I was very embarrassed. I am determined never to repeat the deed and increase the charity of the shale in order to avoid the deed of khalwat. The caning served as a warning to me not to repeat the despicable deed.<sup>25</sup>

The caning imposed on offenders has an impact that can affect their psychological condition. This requires the parties' attention, namely the recovery and rehabilitation of psychology. The recovery and rehabilitation process has not been carried out even though it has been stated in Qanun jinayat. Recovery and psychological rehabilitation can help the individual return to living his life positively after the events experienced. Integration process return to family and society are also essential, so convicts who violate shari'a will not feel excluded and excluded from their group or community.

## **EFFECTIVENESS OF PUNISHMENT AGAINST KHALWAT PERPETRATORS**

Based on the specificity of Aceh Province, the Aceh government has the authority to regulate caning for jinayat perpetrators. The formulation of caning and payment of fines in the form of gold regulated in Qanun is the result of ijihad and has become a positive law.

The jinayat law in Aceh is not intended to bring harm, distress, and hardship to muslims or non-muslims. The presence of jinayat law creates the comfort of the environment and the preservation of nature because jinayat law prohibits humans from committing acts of damaging honor, the environment, and the surrounding nature. Qanun, the jinayat law, becomes a protector and guideline for the community in carrying out the laws of Allah Almighty on the earth of the portico of Makkah. The form of 'uqubat's threat to the perpetrator of jarimah khalwat (pervert) is intended to provide awareness for the perpetrator and, at the same time, a warning to other members of the public not to do jarimah

<sup>24</sup> 1<sup>st</sup> Perpetrator, *interview*, "The Perception of Caning Punishment" (Banda Aceh), September 1, 2019.

<sup>25</sup> 2<sup>nd</sup> Perpetrator, *interview*, "The Perception of Caning Punishment" (Lhokseumawe), August 30, 2019.



khalwat. In addition, 'uqubat (whipping) will be more effective by giving shame and not causing risks to the family. This type of 'uqubat whip also impacts the government's costs to be cheaper than other types of 'uqubat as it is known in the Criminal Code.

The '*uqubat*' threat to the perpetrator of jarimah khalwat (pervert) is intended to provide awareness for the perpetrator and, at the same time, serves as a warning to other members of the public not to do jarimah khalwat. In addition, 'uqubat (whipping) will be more effective by giving shame and not causing risks to the family. This type of 'uqubat whip also impacts the government's costs to be cheaper than other types of 'uqubat as it is known in the Criminal Code.

In Article 23 paragraph (1) of Qanun No. 6 of 2014 on the Jinayat Law, it is explained that any person who knowingly performs jarimah khalwat is threatened with '*uqubat ta'zir* whipping at most 10 (ten) times or a fine of not more than 100 (one hundred) grams of pure gold or imprisonment for a maximum of 10 (ten) months. In this Qanun, there is an addition of 1 (one) lash compared to Qanun No. 14 of 2003 on khalwat, which only gives 9 (nine) lashes. In addition, there is an alternative legal form other than a fine, namely imprisonment for 10 (ten) months. In contrast, in the previous Qanun, the provisions for imprisonment for khalwat violators were not regulated.

Regarding persons who organize, provide facilities, or promote jarimah khalwat are threatened with '*uqubat ta'zir* whipping at most 15 (fifteen) times and/or a fine of not more than 150 (one hundred and fifty) grams of pure gold and/or imprisonment for a maximum of 15 (fifteen) months.<sup>26</sup> Whereas in Qanun, it was only in the form of confinement for 6 (six) months, a minimum of 2 (two) months, and/or a maximum fine of Rp. 15,000,000,- (fifteen million rupiah), at least Rp. 5,000,000,- (five million rupiah). Meanwhile, regarding the repetition of jarimah (recidivist) in Qanun No. 6 of 2014, this is not regulated, while in Qanun No. 14 of 2003, it is regulated, an additional penalty of 1/3 of the main penalty is imposed, as well as regarding administrative sanctions in the form of revocation of business licenses, while in Qanun No. 6 of 2014 concerning the Jinayat Law this is not regulated at all.

One of the different types of punishment for the offense of khalwat in Qanun Jinayat is the payment of fines in the form of pure gold of 100 grams-150 grams against the perpetrator and the party who promotes or organizes so that the criminal act of khalwat occurs. The basis for choosing this type of punishment is inseparable from the sociological and economic aspects of the Acehnese people. According to Asnawi, the reasons related to pure gold as a type of law in Qanun

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<sup>26</sup> See Article 23 ayat (2) Qanun No. 6 of 2014 on Jinayat.

Jinayat in Aceh are because the price of gold is not affected by the value of the currency, which is always ups and downs, so penalties with the value of the currency are increasingly inadequate as a function of punishment.<sup>27</sup>

Sociologically, when viewed from the traditions of the Acehnese people who always make gold as a benchmark for treasures, for example, regarding dowry in Aceh, they always make gold as a form of dowry. In addition to this fine golden penalty having a traditional value, it also contains a religious value. In addition, the penalty of fines with currency has many weaknesses in value and in terms of currency depreciation that are never stable.

In the aspect of Islamic law, fines in the form of pure gold contained in Qanun Jinayat Aceh, in fiqh books, many hadiths state that at the time of the Prophet diyat heavy, namely 100 (one hundred) adult camels were considered equal to the price of 1000 (one thousand) gold dinars, approximately equal to 4200 (four thousand two hundred) grams of gold today. Based on this opinion, the death penalty can be equated to a fine of 4000 (four thousand) grams of rounded gold. Thus, half the death penalty, the penalty of caning a hundred times, can be equated to a fine of 2000 (two thousand) grams of gold. Based on the description above, one caning is considered equal to one month's imprisonment or a fine of 20 (twenty) grams of gold. The statement shows that the taking of fines in the form of pure gold is inseparable from the history of the life of the Acehnese people, which is too thick with Islam.

However, it is not necessarily that the fines in Islam are taken in full by the jinayat law in Aceh. Due to the economic conditions of the people in Aceh, the determination of fines using a relatively large amount of gold feels very burdensome. Therefore, the penalty for fines is lowered by up to 50% of the original provisions. Thus established a new equivalence 1 (one) lashing is equivalent to 1 (one) month in prison and is equivalent to a fine of 10 (ten) grams of gold. Gold was chosen to determine the amount of the fine, in addition to more following the hadith of the Messenger of Allah, also because it is considered more stable so that there will be no gap between the penalty of fine and other penalties due to inflation after a long period.

To make it easier, the Chief Justice of Syar'iyah Aceh was given the authority to regularly set the equality of gold prices with rupiah bills. This determination will change and adjust as ever there is a difference with the market price. The Chief Justice of Syar'iyah is obliged to make adjustments if the price in the determination has differed by more than ten percent from the price in the market, either more expensive or cheaper.

<sup>27</sup> Asnawi, Member of MPU Aceh, *interview*, "Types of Jinayat Khalwat Punishment" (Lhokseumawe), July 23, 2020.

About the effectiveness of punishment, the effectiveness of the punishment cannot be measured from one aspect alone but must instead be viewed from various aspects. According to Usammah, punishment in Islamic law is effective because the punishment is intended not only to cause suffering but also to become a moral instrument and preventive agent for the perpetrator and society.<sup>28</sup>

According to Asnawi, the effectiveness of a sentence cannot be seen in the high number of khalwat crimes that occur. However, the effectiveness of this law must be seen in the education of the ummah towards religion to avoid and avoid despicable and forbidden acts such as jinayat khalwat. Suppose the effectiveness of the sentence is measured by the number of criminal acts of khalwat punished in the Shari'a Court alone without looking at other legal policies. In that case, all the punishments applied will look ineffective. Therefore, he is of the view that Islamic law can be effective by using 5 (five) approaches, namely: 1) Islamic law encourages individual improvement and purifies oneself with religious consciousness in his life; 2) Islamic law always warns people not to commit crimes and threatens the perpetrators with strict laws both in the world and afterlife; 3) Islamic law commands the ummah to help each other in kindness and patience by providing moral guidance and religious education; 4) Islamic law closes the path that can lead to the commission of despicable acts and 5) Islamic law provides a fair and dignified process of judgment and the open execution of punishment.<sup>29</sup>

Asnawi continued that the five approaches can be used as guidelines for enforcing the law against violators of Islamic sharia. However, the five approaches will not be able to be carried out if there is no will, commitment, and seriousness on the part of the government, both executive, legislative and judicial, to enforce the law of Allah in Aceh, which is dubbed the "porch of mecca."<sup>30</sup>

According to the Chairman of the Lhokseumawe City MPU, enforcing Islamic law related to jinayat khalwat must be carried out conclusively by all parties, both the community and the government. The decrease in the number of khalwat crimes is only expected from law enforcement. It is not accompanied by an increase in public awareness of the prohibition of Allah SWT, so the public will undoubtedly commit many criminal acts, and law enforcement will be "flooded" with cases.<sup>31</sup> He added that elements of society and the government should work together at all stages of tackling the crime of khalwat. At the socialization stage,

<sup>28</sup> Usammah, The Lecturer of Sharia Faculty IAIN Lhokseumawe, *interview*, "Punishment and Its Effectiveness" (Lhokseumawe), January 17, 2020.

<sup>29</sup> Asnawi, Member of MPU Aceh. *interview*, "Types of Jinayat Khalwat Punishment". (Lhokseumawe), July 23, 2020.

<sup>30</sup> Asnawi, Member of MPU Aceh. *interview*, "Types of Jinayat Khalwat Punishment". (Lhokseumawe), July 23, 2020.

<sup>31</sup> Abu Bakar Ismail, Chairman of MPU Lhokseumawe. *interview*, "Jinayat Khalwat and Law Enforcement". (Lhokseumawe), January 20, 2020.

the government must cooperate with community organizations (CSOs) to improve the return of ghirah proselytizing Islamically to the community. This activity can be a persuasive preventive measure so that people avoid adultery by socializing the prohibition of khalwat in Qanun Jinayat Aceh.

When viewed from the efficiency and effectiveness of prevention efforts, it is better than repressive efforts. Preventing evil is better than trying to educate criminals to be good again because it is easier, cheaper, and more effective. In the aspect of criminology, improving certain social conditions in social life can prevent the occurrence of a crime.

According to Sumiadi, crime prevention can be done by combining several methods. The first method is a doctrinal and moralistic method that is carried out by disseminating the correct religious and moral teachings, socializing legislation that prohibits such wrongdoings, and other means that can curb the lust for evil. At the same time, the second way is an abilisionistic way that seeks to eradicate the cause of the disaster. For example, it is known that the lack of religious knowledge is one of the factors causing the occurrence of khalwat crimes. Hence, increasing religious knowledge to reduce khalwat crimes is an abiliosinistic approach. Crime prevention through a civic approach, commonly called Community Based Crime Prevention, involves all its activities to improve the community's capacity to reduce crime by increasing informal social control.<sup>32</sup>

In law enforcement, the effectiveness of punishment for khalwat crimes can be seen from the number of khalwat criminal acts from the investigation, prosecution, and judicial processes. The Lhokseumawe Shari'a Court has ruled on 50 cases annually. Although the number of khalwat cases is not so many, the trend is increasing yearly. However, the number of cases cannot be used as the only measure to assess the effectiveness of punishment for a crime because each stage of the law enforcement process is different in number.

For example, from 2016-2020, the Langsa City Syar'iyah Court only handled 7 cases of khalwat crimes. All seven cases were found guilty, and the khalwat crime perpetrators were sentenced to 3 public canings. They are subject to Article 23 of Qanun No. 6 of 2014 on the Jinayat Law, where the penalty is a maximum of 10 (ten) whipping or a maximum fine of 100 (one hundred) grams of pure gold or imprisonment for a maximum of 10 (ten) months.

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<sup>32</sup> Sumiadi, The Lecturer of Law Faculty Malikussaleh University. *interview*, (Lhokseumawe). July 5, 2020.

**Figure 1.** Number of Jinayat Khalwat Cases in Langsa City 2016-2020

No.	Type of Violations	Year	Number of cases
1	<i>Khalwat</i>	2017	2
2	<i>Khalwat</i>	2018	1
3	<i>Khalwat</i>	2019	1
4	<i>Khalwat</i>	2020	0
<b>Total</b>			<b>4</b>

Source: Syar'iyah Court Langsa

When viewed from the number of cases, within 4 years, 'uqubat lashing, fines, and imprisonment are considered adequate because they can reduce the number of khalwat crimes that occur in the community, especially in the Langsa City area. According to the deputy chief justice of the Langsa City Syar'iyah Court, the khalwat cases in Langsa City are now few, and even the number is almost non-existent. This can be confirmed from the number of statistics on the handling of cases in the Langsa City Syar'iyah Court, which shows that in 2018 and 2019, there was only 1 (one) case, while in the August 2020 period, there was not a single case that entered the Langsa City Syar'iyah Court.<sup>33</sup>

The decline in the number of jinayat khalwat cases in Langsa City is inseparable from the caning in public witnessed by the public. The Deputy Speaker of Langsa City believed that the public would be embarrassed if the punishment of being whipped was carried out in public and witnessed by people who may know the perpetrator and his family.<sup>34</sup> The punishment damaged the perpetrator's reputation and his family's honor. However, the number of cases of jinayat khalwat occurs a lot in Banda Aceh City, the provincial capital. In 4 years, the number of cases of jinayat khalwat was 72. Although the number is decreasing every year, the statistics of jinayat khalwat cases are pretty significant compared to other areas far from the provincial capital, Aceh, which is considered to be more strictly law enforcement against violations of Islamic law.

<sup>33</sup> Hasanuddin, Deputy Chief Justice of The Syar'iyah Court Langsa. *interview*, (Langsa). June, 20 2020.

<sup>34</sup> Hasanuddin, Deputy Chief Justice of The Syar'iyah Court Langsa. *interview*, (Langsa), June 20, 2020.

**Figure 2.** Number of Jinayat Khalwat Cases in Banda Aceh City 2017-2020

No.	Type of Violations	Year	Number of Cases
1	<i>Khalwat</i>	2017	22
2	<i>Khalwat</i>	2018	8
3	<i>Khalwat</i>	2019	32
4	<i>Khalwat</i>	2020	10
<b>Total</b>			<b>72</b>

Source: Syar'iyah Court Banda Aceh

The number of jinayat khalwat cases above shows that jinayat khalwat perpetrators are still common in Banda Aceh City. Although the number of khalwat cases had decreased from 22 cases in 2017 to 8 cases in 2018, the number of khalwat cases increased dramatically in 2019 to 32 cases. Even in May 2020, the number of khalwat cases that have entered the investigation stage in Wilayul Hisbah amounted to 8 cases. This shows that the effectiveness of punishment against jinayat khalwat has not worked as it should. In some cases, the perpetrators have repeated jinayat khalwat (recidivists).

Of the many cases mentioned above, several cases have entered the judicial stage and received a verdict from the Court Syar'iyah Kota Banda Aceh, only 3 cases.<sup>35</sup> Among the cases that have been decided is the case of khalwat in 2017 No. 04/JN/2017/MS. Bna against Rahmad Hidayat Bin Samidan. Yt. CS. However, in 2018 two khalwat cases received a ruling from the Banda Aceh City Syar'iyah Court, namely Decision No. 9/JN/2018/MS. Bna against convict Nurul Aini Binti M. Yusri and Verdict No, 11/JN/2018/MS. Bna against convicted Mega Ramadhani Binti M. Hasyem.<sup>36</sup>

One of the causes of the increasing number of khalwat cases in Banda Aceh City is because Banda Aceh City has become an educational center or a student city so that the perpetrators of jinayat khalwat come from students and students. According to the Chief Justice of Banda Aceh City Court, khalwat perpetrators who are still students will be trained and returned to the family. However, if the perpetrators have occurred repeatedly, they will only be directed to law enforcement. However, adult perpetrators will be directed to the law enforcement process without a coaching process because, generally, the perpetrators are adults, so they know the prohibitions and consequences of doing jinayat khalwat in Aceh.<sup>37</sup>

<sup>35</sup> Syar'iyah Court Banda Aceh. "Recapitulation of Cases of Violation of Islamic Sharia in Banda Aceh". (Banda Aceh: Syar'iyah Court, 2020).

<sup>36</sup> Syar'iyah Court Banda Aceh, "Recapitulation of Cases of Violation of Islamic Sharia in Banda Aceh" (Banda Aceh: Syar'iyah Court, 2020)..

<sup>37</sup> Alaidin, Chairman of Syar'iyah Court Banda Aceh, *interview*, (Banda Aceh), January 23, 2020.

The aspect of law enforcement against jinayat khalwat in Lhokseumawe City shows a downward trend. Even within 4 (four) years, the number of jinayat cases was only 1 (one) and has been confirmed in the Lhoseumawe City Syar'iyah Court. The jinayat khalwat case took place in 2019 and has been decided by the Lhoseumawe City Syar'iyah Court with judgment Number 04/JN/2019/MS-Lsm.

**Figure 3.** Number of Jinayat Khalwat Cases in Lhokseumawe City 2017-2020

No.	Type of Violations	Year	Number of Cases
1	<i>Khalwat</i>	2017	0
2	<i>Khalwat</i>	2018	0
3	<i>Khalwat</i>	2019	1
4	<i>Khalwat</i>	2020	0
<b>Total</b>			<b>1</b>

Source: Syar'iyah Court Lhokseumawe

The decrease in the number of khalwat cases in Aceh was influenced by the high legal awareness of the people of Lhokseumawe City towards implementing Islamic law, especially the regulation of jinayat khalwat. According to the Clerk of The Syar'iyah Court Lhokseumawe City, it is stated that the caning penalty applied to the perpetrators of jinayat khalwat has a deterrent effect so that people do not want to do acts of being alone or in unison with the mahramnya.<sup>38</sup>

Although the punishment for jinayat khalwat varies from imprisonment, fines, and caning, the punishment that is considered to have a deterrent effect is the punishment of caning in public because this punishment focuses on shame, not on pain on the body of the convict. Every convict who has served a caning feels ashamed to be witnessed by the community, among whom is known and part of his own family, colleagues, and relatives. Of the three research locations sampled in this study, two research locations were the City area. Lhokseumawe and Langsa have shown a significant decrease in the number of cases. However, the number of cases of jinayat khalwat in Banda Aceh City increased. The punishment in Qanun Jinayat Aceh, especially those regulating jinayat khalwat, is considered ineffective in Banda Aceh City.

## CONCLUSION

The public's perception of the violation of *khalwat*, in general, shows that the community fully supports the establishment of *jinayat khalwat* rules aimed at good and benefit. The formation of *Qanun Jinayat*, especially the arrangement of *jinayat*

<sup>38</sup> Surya, The Clerk of Syar'iyah Court Lhokseumawe, *interview*, (Lhokseumawe), July 23, 2020.

*khalwat*, reflects the Acehnese people's very Islamic life so that the protection of self-respect and their families cannot be inseparable from people's lives. The Acehnese people consider that to maintain stability, legal certainty, and justice, it is necessary to establish laws and regulations in the form of *Qanun* to regulate and ensnare perpetrators of *khalwat* crimes aiming at protecting or preventing the community from acts leading to adultery that can damage the honor of the human.

The application of penalties for *khalwat* violations has not been effective in all regions of Aceh province. Of the three research areas, the effectiveness of caning, fines, and imprisonment against *jinayat khalwat* occurred in the areas of Langsa and Lhokseumawe Cities. This is indicated by the decrease in the number of *khalwat* cases in both regions every year. However, the application of punishment against *jinayat khalwat* did not positively affect the area of Banda Aceh City as the provincial capital. The number of *jinayat khalwat* occurring in Banda Aceh City increases every year.

As a contribution, the government is advised to be more aggressive in socializing *Qanun* No. 6 of 2014 concerning the *Jinayat* Law to the community, especially socialization of arrangements, wisdom on the prohibition of *khalwat*, and adverse impacts on *jarimah khalwat*. Although the Acehnese people are generally Muslim, not all people know and understand the substance of the regulation of *jarimah khalwat* in *Qanun* No. 6 of 2014 on the *Jinayat* Law, so there are still people who think that caning violates Human Rights.

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